AMBANK (M) BHD

v.

MAXIS BROADBAND SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[ORIGINATING SUMMONS NO: D8-24-26-2007]
16 APRIL 2007

BANKING: *Securities for advances - Loan secured by way of charge over property - Assignment of rental proceeds - Assignee bank can step into shoes of assignor landlord to claim assigned rent - Whether assignee had effectively informed tenant about assignment - Whether any dispute between assignor and assignee is of any concern to tenant - Whether necessary for tenant to take an interpleader to decide to whom rent should be paid*

The plaintiff claimed against the defendant the sum of RM4,800 per month from June 2006 onwards pursuant to a deed of assignment dated 15 April 1995 between the plaintiff and the landlord of a premises numbered 171. Under the deed of assignment the landlord had agreed to assign all rentals due to them for the building 171 in consideration of a loan given by the plaintiff bank to the landlord. Due notice of the assignment was given to the defendant on 12 June 2006. The said notice was addressed to Maxis Communications Berhad which was not the defendant in this case. But on 1 November 2006 the plaintiff sent another notice now addressed to the defendant. There were correspondence in between the two notices which indicated that the defendant had assumed that the first notice although sent to Maxis Communications was meant to apply to the defendant.

The defendant opposed the application, *inter alia*, on the grounds: (a) that the notice dated 12 June 2006 was addressed to the wrong party; (b) that upon receiving the notice the defendant also received an "adverse" claim for the money which the landlord purportedly assigned to the plaintiff; (c) that the defendant had promptly made payment of the rental to the landlord from June 2006 to March 2007; (d) that payment for future rentals including April 2007 had not been paid either to the plaintiff or to the landlord pending the decision of the court; and (e) that even if the notice dated 12 June 2006 was valid, the defendant was not bound to pay any rental to the plaintiff for any period before 12 June 2006 *ie,* before they received the notice of assignment.

Held (allowing the application):

(1) Reading the first and the second notices in tandem with the correspondence between the parties that followed the event, it was clear that the plaintiff had effectively communicated to the defendant the fact that the rental of the premises had been assigned to it under the deed of assignment effective from 12 June 2006. (para 13)

(2) Any dispute between the assignor and the assignee (the plaintiff and the landlord) was not the concern of the defendant. This was therefore not a proper case for the defendant to join the landlord as a party to the dispute. Neither was it a proper case for the defendant to take an interpleader to decide to whom the rent should be payable to. It was clear that the rent had been assigned to the plaintiff who now stepped into the shoes of the landlord as if he was the landlord himself to claim the assigned rent. (para 14 & 15)

Case(s) referred to:
Arab Malaysian Merchant Bank Bhd v. Sin Hiap Enterprise [1989] 2 CLJ 980; [1989] 1 CLJ (Rep) 307 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 4(3)

For the plaintiff - Renu Zechariah (Cheryl Kwan with her); M/s Rosley Zechariah
For the defendant - Brendan Siva; M/s Kadir, Andri & Partners

Reported by Amutha Suppayah

JUDGMENT

Kang Hwee Gee J:

[1] This is an application by the plaintiff against the defendant claiming the sum of RM4,800 per month from June 2006 onwards pursuant to a deed of assignment dated 15 April 1995 between the plaintiff and the landlord of the premises 171, Jalan Raja Muda Abdul Aziz, Kampung Baru, 50300 Kuala Lumpur.

[2] The recital of the deed of assignment read as follows:

> ARTICLE I - RECITALS
>
> Section 1.01 The Property
>
> The Assignor is the beneficial or registered owner of the seven and a half (7 1/2) storey office building and the four (4) storey apartment building erected over the land held under H.S. (D) 36709 Lot 1158

Section 41 Town of Kuala Lumpur, District of Wilayah Persekutuan and identified as No. 171, Jalan Raja Muda Abdul Aziz, Kampung Baru, 50300 Kuala Lumpur (hereinafter referred to as "the Property").

Section 1.02 The Tenancy Agreements

By Tenancy/Lease Agreements in writing in respect of the Property (hereinafter referred to as "the Tenancy Agreements" which expression shall include where and when applicable such other lease agreements as may from time to time be substituted and/or included) already entered into or from time to time hereafter entered into between the Assignor of the one part and the respective tenants (whether present or future) of the respective Tenancy Agreements (hereinafter called "the Tenants" of the other part, the Assignor agreed to let various portions (hereinafter referred to as "the Lettable Space") of the Property to the Tenant upon the terms and conditions more fully set out therein.

Section 1.03 Application for Term Loan Facilities

The Assignor has requested and the Lender has agreed to grant to the Assignor a term loan facility of up to the total aggregate principal limit of Ringgit Malaysia Five Million Three Hundred Thousand (RM5,300,000.00) only (hereinafter referred to as "the Term Loan") secured *inter alia* by way of a Memorandum of Charge executed or to be executed by the Assignor in favour of the Lender creating a first fixed charge over the Property (hereinafter referred to as "the Memorandum of Charge") upon the terms and conditions therein contained.

[3] Under s. 3.01 of the deed of assignment the landlord agreed to assign all rentals due to them for the building 171 in consideration of a loan given by the plaintiff bank to the landlord.

[4] Section 3.01 read as follows:

Section 3.01 Assignment

In consideration of the Lender agreeing at the request of the Assignor to grant or continuing to grant the Term Loan by way of advances or otherwise having given or giving credit or accommodation to or affecting the Term Loan whatsoever for so long as the Lender may think fit to the Assignor upon the terms and conditions set out in this Assignment and for better securing the repayment and payment of all moneys interests thereon and any other moneys more particularly set out in the Loan Agreement and the Memorandum of Charge, the Assignor as the beneficial owner Hereby Assigns absolutely unto the Lender all the Assignor's rights title and interest in and to the whole of the rental sums as may now or at any time and from time to time

hereafter become due and payable by the Tenants to the Assignor in accordance with the provisions of the Tenancy Agreements and all documents now in existence or hereafter to be made which may be necessary for enabling the Lender to collect the rental sums or part thereof and the full benefits granted then and all stipulations therein contained and all remedies for enforcing the same Provided Always that notwithstanding the assignment hereinbefore contained or any other provisions of this Assignment the Assignor shall and hereby undertakes to observe perform and be bound by all whatsoever conditions covenants and stipulations therein the Tenancy Agreements on the part of the Assignor expressed or contained And Further Provided Always the Assignor shall at all times cause all the tenants under the Tenancy Agreements to promptly pay the rental sums directly to the Lender.

[5] Due notice of the assignment was given to the defendant on the 12 June 2006 which read as follows:

Form of Notice of Assignment

To: Maxis Communications Berhad
Level 18, Menara Maxis KLCC
Off Jalan Ampang
50088 Kuala Lumpur

ASSIGNOR : KAYATA SDN. BHD. (Company No. 166359-X)
ASSIGNEE : AMBANK (M) BERHAD (Company No. 8515-D)
FACILITY : TERM LOAN FACILITY OF RM5,300,000.00
TENANT : MAXIS COMMUNICATIONS BERHAD
PROPERTY : ROOF TOP FLOOR, WISMA AWAL, 171, JALAN RAJA MUDA, 50300 KUALA LUMPUR

We refer to the Tenancy Agreement made between yourselves and ourselves in respect of your taking on rent from us of the abovementioned Property.

WE HEREBY GIVE YOU NOTICE, pursuant to the terms of the Assignment of Rental Proceeds (a copy which is attached hereto) dated the 15th day of April 1995 in favour of AmBank (M) Berhad, we have assigned to the Assignee all our rights title and interest in the Tenancy Agreement and to any moneys whatsoever payable to us on our account under the Tenancy Agreement.

You are hereby directed to pay all rentals due and payable or to be due and payable under the Tenancy Agreement to the Assignee or to such other person or persons as the Assignee shall from time to time direct.

Please also be advised that this Notice of Assignment cannot be cancelled without prior written consent from the Assignee.

Please sign the acknowledgement on the enclosed duplicate of this letter and forward such duplicate to the Assignee at Level 18, Menara Dion, Jalan Sultan Ismail, 50250 Kuala Lumpur.

Dated this 12th day of June 2006

Signed By	)	AMBANK (M) BERHAD
	)	(Company No. 8515-D)
	)	by its Attorney(s)
as attorney for the ASSIGNOR	)	
	)	
		Sgd. Sgd.
		... ...

cc. Kayata Sdn. Bhd.

We hereby acknowledge receipt of a notice of which this is a duplicate and agree to abide by its terms.

Sgd.

Dated: 14.6.06 (for and on behalf of Maxis Communications Berhad)

[6] The said notice was addressed to Maxis Communications Berhad which was not the defendant in this case. But on 1 November 2006 the plaintiff sent another notice now addressed to the defendant.

[7] There were correspondence in between the two notices which indicates that the defendant had assumed that the first notice although sent to Maxis Communications was meant to apply to the defendant. See the letters in exh. "AKS-5(a)-(g)".

[8] The application is opposed on the following grounds:

1. The notice dated 12 June 2006 was addressed to the wrong party. Section 4(3) of the Civil Law Act 1956 requires "express notice" to be given to the person from whom the assignor would have been entitled to receive the money now being claimed. In the correspondence between the parties it was the defendant who pointed out to the plaintiff by letter dated 17 October 2006 that the notice was addressed to the wrong party. It was pursuant to this letter that the plaintiff issued a new notice of assignment to the correct party that is to say the defendant choosing to date the notice as 1 November 2006. This is not an effective assignment with respect to payment of money before 1 November 2006.

2. Upon receiving the notice the defendant also received an "adverse" claim for the money which the landlord purportedly assigned to the plaintiff. See letters dated 1 July 2006, 13 September 2006, 30 October 2006 and 13 November 2006 (exh. "AKS-5", exh. "L-4", exh. "L-5" and exh. "L-6"). In all these letters the landlord informed us:

   a) to ignore the notice because there is a "misunderstanding on the part of the plaintiff";

   b) that the plaintiff had agreed that rental below RM5,000 should be collected by the landlord and those above RM5,000 should be banked into an escrow account;

   c) The documents exhibited by the defendant were not replied to.

3. There is no dispute between the plaintiff and the defendant. The defendant had promptly made payment of the rental to the landlord from June 2006 to March 2007.

4. Payment for future rentals including April 2007 has not been paid either to the plaintiff or to the landlord pending the decision of this court.

5. Even if the court finds that the notice dated 12 June 2006 is valid, the defendant is not bound to pay any rental to the plaintiff for any period before 12 June 2006 that is to say before they received the notice of assignment.

6. This is the basis for interpleading the landlord and the plaintiff in our application encl. 4 and to add the landlord as the co-defendant in encl. 6.

[9] Reply by plaintiff:

1. The first notice is valid as it is an express notice given by the plaintiff to the defendant and evidenced by the defendant's own letter dated 26 June 2006 whereby the defendant confirms receipt of that notice. See exh. "AKS-5(a)".

2. The subsequent letter referred to by the defendant dated 17 October 2006 highlighting the wrong party is an afterthought because they have accepted and assumed that the first notice was meant for them.

3. The landlord's letters marked as exhs. "AKS-5", "L-4", "L-5" and "L-6" do not constitute a dispute that there was a valid assignment in the plaintiff's favour.

4. Even if there is a dispute between the assignor and the assignee, case law has held as per the plaintiff's bundle of authorities (tab 1) that this dispute should not affect the liability of the defendant.

Findings And Decision

[10] The law of assignment of debt or chose in action has been succintly set up by Siti Norma Yaakob J as she then was in *Arab Malaysian Merchant Bank Bhd v. Sin Hiap Enterprise* [1989] 2 CLJ 980; [1989] 1 CLJ (Rep) 307 HC, the relevant passage at "held" of which is read as follows:

[1] Under a factoring agreement, the customer's duty to pay the factor arises when he receives notice of the assignment and he must regard the factor as his creditor so far as the assigned debt is concerned.

[2] The suitability or otherwise of the goods sold and delivered has no bearing on the defendant's liability and they were therefore liable to the plaintiff who purchased FYE's book debts which is the basis of the credit factoring.

[3] The issue of fraud is of no concern to the plaintiff who were not a party to it.

[4] In this case, the defendant's liability arises upon receipt of the letter of notification.

[5] The defendant being a stranger to the factoring agreement cannot invoke the agreement to escape liability.

[11] The judgment involves factoring agreements. But the same principle applies with respect to an assignment of rental by a deed of assignment of which express notice had been given to the tenant under s. 4(3) of the Civil Law Act 1956.

[12] The purpose of the express notice is to bring to the notice of the person served with the notice of the fact mentioned therein.

[13] Reading the first and the second notices in tandem with the correspondence between the parties that followed the event, I would accept as clear that the plaintiff had effectively communicated to the defendant the fact that the rental of the premises had been assigned to it under the deed of assignment effective from 12 June 2006 that is to say from the day the defendant had notice of the assignment.

A **[14]** I am in full agreement with the submission of the counsel for the plaintiff that any dispute between the assignor and the assignee (the plaintiff and the landlord) is not the concern of the defendant.

[15] This is therefore not a proper case for the defendant to join the
B landlord as a party to the dispute. Neither is it a proper case for the defendant to take an interpleader to decide to whom the rent should be payable to. It is clear that the rent had been assigned to the plaintiff who now steps into the shoes of the landlord as if he is the landlord himself to claim the assigned rent.

C **[16]** Order in terms of encl. 1 with costs.

[17] Enclosures 4 and 6 dismissed with no order as to costs.

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